

REFERENCE TITLE: **justices and judges; governor appointment**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HCR 2016

Introduced by
Representative Gray C

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; REPEALING ARTICLE VI,
SECTIONS 36 AND 41, CONSTITUTION OF ARIZONA; AMENDING ARTICLE VI, SECTIONS
37, 38 AND 40, CONSTITUTION OF ARIZONA; RELATING TO THE JUDICIAL DEPARTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the House of Representatives of the State of Arizona, the
2 Senate concurring:

3 1. Article VI, sections 36 and 41, Constitution of Arizona, are
4 proposed to be repealed as follows if approved by the voters and on
5 proclamation of the Governor:

6 (a) Article VI, section 36, Constitution of Arizona,
7 relating to the commission on appellate court appointments, is
8 repealed.

9 (b) Article VI, section 41, Constitution of Arizona,
10 relating to the commission on trial court appointments, is
11 repealed.

12 2. Article VI, sections 37, 38 and 40, Constitution of Arizona, are
13 proposed to be amended as follows if approved by the voters and on
14 proclamation of the Governor:

15 37. Judicial vacancies and appointments; initial
16 terms; residence; age

17 Section 37. A. Within sixty days from the occurrence of
18 a vacancy in the office of a justice or judge of any court of
19 record, except for vacancies occurring in the office of a judge
20 of the superior court or a judge of a court of record inferior
21 to the superior court **IN A COUNTY HAVING A POPULATION OF LESS**
THAN TWO HUNDRED FIFTY THOUSAND PERSONS ACCORDING TO THE MOST
RECENT UNITED STATES CENSUS, the ~~commission on appellate court~~
~~appointments, if the vacancy is in the supreme court or an~~
~~intermediate appellate court of record, shall submit to the~~
~~governor the names of not less than three persons nominated by~~
~~it to fill such vacancy, no more than two of whom shall be~~
~~members of the same political party unless there are more than~~
~~four such nominees, in which event not more than sixty percentum~~
~~of such nominees shall be members of the same political party~~
GOVERNOR SHALL APPOINT ANY PERSON OF THE GOVERNOR'S OWN CHOOSING
TO FILL THE VACANCY.

33 B. ~~Within sixty days from the occurrence of a vacancy in~~
34 ~~the office of a judge of the superior court or a judge of a~~
35 ~~court of record inferior to the superior court except for~~
36 ~~vacancies occurring in the office of a judge of the superior~~
37 ~~court or a judge of a court of record inferior to the superior~~
38 ~~court in a county having a population of less than two hundred~~
39 ~~fifty thousand persons according to the most recent United~~
40 ~~States census, the commission on trial court appointments for~~
41 ~~the county in which the vacancy occurs shall submit to the~~
42 ~~governor the names of not less than three persons nominated by~~
43 ~~it to fill such vacancy, no more than two of whom shall be~~
44 ~~members of the same political party unless there are more than~~
45 ~~four such nominees, in which event no more than sixty per centum~~

1 of such nominees shall be members of the same political party.
2 A nominee shall be under sixty five years of age at the time his
3 name is submitted to the governor. Judges of the superior court
4 shall be subject to retention or rejection by a vote of the
5 qualified electors of the county from which they were appointed
6 at the general election in the manner provided by section 38 of
7 this article.

8 C. B. A vacancy in the office of a justice or a judge of
9 such courts of record shall be filled by appointment by the
10 governor without regard to political affiliation ~~from one of the~~
11 ~~nominees whose names shall be submitted to him as hereinabove~~
12 ~~provided~~. THE GOVERNOR SHALL SUBMIT TO THE SENATE FOR THE
13 CONSENT OF THE SENATE THE NAME OF THE NOMINEE FOR JUSTICE OR
14 JUDGE. IF THE SENATE CONSENTS TO THE NOMINATION, THE GOVERNOR
15 SHALL APPOINT THE NOMINEE TO SERVE FOR THE TERM OR, IN THE CASE
16 OF A VACANCY, FOR THE UNEXPIRED TERM IN WHICH THE VACANCY
17 OCCURRED. IF THE SENATE REJECTS THE NOMINATION, THE GOVERNOR
18 SHALL PROMPTLY NOMINATE ANOTHER PERSON WHO MEETS THE
19 REQUIREMENTS FOR THE OFFICE OF JUSTICE OR JUDGE. EACH JUSTICE
20 OR JUDGE WHO IS CONFIRMED BY THE SENATE PURSUANT TO THIS SECTION
21 IS SUBJECT TO RECONFIRMATION BY THE SENATE EVERY FOUR YEARS. In
22 making the appointment ~~FOR A JUSTICE OR JUDGE OF A COURT OF~~
23 ~~RECORD~~, the governor shall consider the diversity of the state's
24 population for an appellate court appointment and the diversity
25 of the county's population for a trial court appointment,
26 however, the primary consideration shall be merit. ~~If the~~
27 ~~governor does not appoint one of such nominees to fill such~~
28 ~~vacancy within sixty days after their names are submitted to the~~
29 ~~governor by such commission, the chief justice of the supreme~~
30 ~~court forthwith shall appoint on the basis of merit alone~~
31 ~~without regard to political affiliation one of such nominees to~~
32 ~~fill such vacancy. If such commission does not, within sixty~~
33 ~~days after such vacancy occurs, submit the names of nominees as~~
34 ~~hereinabove provided, the governor shall have the power to~~
35 ~~appoint any qualified person to fill such vacancy at any time~~
36 ~~thereafter prior to the time the names of the nominees to fill~~
37 ~~such vacancy are submitted to the governor as hereinabove~~
38 ~~provided~~. Each justice or judge so appointed shall initially
39 hold office for a term ending sixty days following the next
40 regular general election after the expiration of a term of two
41 years in office. Thereafter, the terms of justices or judges of
42 the supreme court and the superior court shall be as provided by
43 this article.

1 D. C. A person appointed to fill a vacancy on an
2 intermediate appellate court or another court of record now
3 existing or hereafter established by law shall have been a
4 resident of the counties or county in which that vacancy exists
5 for at least one year ~~prior to his~~ BEFORE THE PERSON'S
6 appointment, in addition to possessing the other required
7 qualifications. A nominee shall be under sixty-five years of
8 age at the time ~~his~~ THE NOMINEE'S name is submitted to the
9 ~~governor~~ SENATE.

10 38. Declaration of candidacy; form of judicial
11 ballot, rejection and retention;
12 reconfirmation; failure to file declaration

13 Section 38. A. A justice or judge of the supreme court
14 or an intermediate appellate court shall file in the office of
15 the secretary of state, and a judge of the superior court or
16 other court of record including such justices or judges who are
17 holding office as such by election or appointment at the time of
18 the adoption of this section except for judges of the superior
19 court and other courts of record inferior to the superior court
20 in counties having a population of less than two hundred fifty
21 thousand persons, according to the United States census, shall
22 file in the office of the clerk of the board of supervisors of
23 the county in which he regularly sits and resides, not less than
24 sixty nor more than ninety days ~~prior to~~ BEFORE the regular
25 general election next preceding the expiration of his term of
26 office, a declaration of his desire to be retained in office,
27 and the secretary of state shall certify to the several boards
28 of supervisors the appropriate names of the candidate or
29 candidates appearing on such declarations filed in his office.

30 B. The name of any justice or judge whose declaration is
31 filed as provided in this section shall be placed on the
32 appropriate official ballot at the next regular general election
33 under a nonpartisan designation and in substantially the
34 following form:

35 Shall _____, (Name of justice or judge) of the
36 _____ court be retained in office? Yes No (Mark X
37 after one).

38 C. If a majority of those voting on the question votes
39 "No," ~~then,~~ upon the expiration of the term for which such
40 justice or judge was serving, a vacancy shall exist, which shall
41 be filled as provided by this article. If a majority of those
42 voting on the question votes "Yes," such justice or judge shall
43 remain in office for another term, subject to SENATE
44 CONFIRMATION EVERY FOUR YEARS AND removal as provided by this
45 constitution.

1 D. The votes shall be counted and canvassed and the
2 result declared as in the case of state and county elections,
3 whereupon a certificate of retention or rejection of the
4 incumbent justice or judge shall be delivered to him by the
5 secretary of state or the clerk of the board of supervisors, as
6 the case may be.

7 E. If a justice or judge fails to file a declaration of
8 his desire to be retained in office, as required by this
9 section, ~~then~~ his office shall become vacant upon expiration of
10 the term for which such justice or judge was serving.

11 40. Option for counties with less than two hundred
12 fifty thousand persons

13 Section 40. Notwithstanding any provision of this article
14 to the contrary, any county having a population of less than two
15 hundred fifty thousand persons, according to the most recent
16 United States census, may choose to select its judges of the
17 superior court or of courts of record inferior to the superior
18 court as if it had a population of two hundred fifty thousand or
19 more persons. Such choice shall be determined by vote of the
20 qualified electors of such county voting on the question at an
21 election called for such purpose by resolution of the board of
22 supervisors of such county. If such qualified electors approve,
23 ~~the provisions of~~ sections 12, 28, 30, 35, ~~through~~ 37, 38,
24 39, ~~41~~ and 42 shall apply as if such county had a population of
25 two hundred fifty thousand persons or more.

26 2. The Secretary of State shall submit this proposition to the voters
27 at the next general election as provided by article XXI, Constitution of
28 Arizona.